IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

WP(C).No. 24641 of 2007(H)

PETITIONER:

M.G.S. MITHRAN, AGED 57 YEARS,
S/O. K.MADHAVAN NAIR, 'KISHKINTHA',NEAR R.C.CHURCH
CONVENT ROAD, NEYYATTINKARA.

BY ADV. SRI.T.RAVIKUMAR
SMT.G.AMBILI

RESPONDENTS:
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1. STATE OF KERALA,
REP. BY THE CHIEF SECRETARY, TRIVANDRUM.

2. THE HOME SECRETARY,
STATE OF KERALA, TRIVANDRUM.

3. THE COMMISSIONER OF POLICE, TRIVANDRUM.

4. THE ASSISTANT COMMISSIONER OF POLICE,
FORT POLICE STATION, TRIVANDRUM.

5. THE DYSP, NEYYATTINKARA POLICE STATION.

6. RAJEEB,
MUJEEB MANZIL, NEAR MOSQUE, BANGLADESH COLONY,
VALLAKKADAVU P.O., TRIVANDRUM.

R1 & R2 BY GOVT. PLEADER SRI.SALIM P.A.
ADV. SRI.K.K.SUNIL KUMAR (IDUKKI)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:-

Ext.P1: **Copy of the FIR in Crime No.305 of 2006 of Thampanoor Police Station dated 8.10.2006.**

Ext.P2: **Copy of the receipt dated 12.2.2007.**

Ext.P3: **Copy of the order of the Sessions Judge, Thiruvananthapuram on 20th October, 2006 for anticipatory bail.**

Ext.P4: **Copy of the detailed statement in Crl.M.C.No.221 of 2007.**

RESPONDENTS' EXHIBITS:-

Ext.R4(a): **Photocopy of letter dated 12.2.2007.**

Ext.R6(a): **Copy of the letter from the petitioner to the 6th respondent.**

Ext.R6(b): **Copy of the letter from the petitioner to the 6th respondent.**

(true copy)

P.S. TO JUDGE.

Kvs/-

K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.

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W.P.(C).NO.24641 of 2007-H

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Dated this the 26th day of September, 2007

JUDGMENT

Balakrishnan Nair J.

The petitioner is the first accused in Crime No.305 of 2006 of Thampanoor Police Station registered for the alleged commission of offences under Section 420 read with Section 34 I.P.C. and also under Section 45-T (1) and (2) of the Reserve Bank of India Act. The F.I.R. in that case is Ext.P1. The informant in the said case is the District Collector, Thiruvananthapuram. The allegation against the petitioner is that he was running a society called "Margin Free Home Club". He received amounts from various franchisees of the said society. He also collected membership fee from the public giving various attractive promises. The amounts were misappropriated. The collection was made in violation of the provisions of the Reserve Bank of India Act also. There were several complaints from the affected parties against the petitioner. The District Collector made an enquiry and based on the information received by him, the said officer filed a complaint before the Commissioner of Police which resulted in registration of the crime.

2. The petitioner submits, he has been granted anticipatory bail in the above said crime by the Sessions Court. The petitioner has moved this court by filing Crl.M.C. No.221/2007 praying to quash Ext.P1 F.I.R. The petitioner submits, the 6th respondent herein kidnapped him on 28.1.2007. He was in the custody of the 6th respondent till he escaped on 8.2.2007. Detailing these facts, he filed a complaint before the Commissioner of Police on 12.2.2007 pursuant to which, Ext.P2 receipt was issued. The said complaint was forwarded to the Asst. Commissioner of Police by the Commissioner of Police. He was directed to appear by the Asst. Commissioner of Police before the Fort Police Station on 14.2.2007. When he went there, he was again kidnapped by the 6th respondent. He was under the custody of the said respondent for six months. Thereafter, he escaped and this writ petition is filed seeking police protection for his life from the highhanded actions of the 6th respondent. The prayers in the writ petition are the following:

> "i. to issue a writ in the nature of mandamus or any other appropriate writ, order or direction directing respondents 1 to 5 to grant the petitioner and his family members sufficient police protection from R6 and his henchmen;
>
> ii) to direct the respondents to register appropriate case against R6 and his henchmen for kidnapping the petitioner and causing bodily hurt to the petitioner and for having forcibly taken signed stamp papers and blank cheques."

3. The 6th respondent has filed a counter affidavit stating that the petitioner was absconding since October 2006. From the retail outlets of the 'Margin Free Home Club' the petitioner was collecting fee at the rate of Rs.3 lakhs from each franchise. The 6th respondent was granted two outlets and an amount of Rs.6 lakhs has been collected from him. The fact that he was absconding, will be evident from Exts.R6(a) and R6(b) letters. They speak for themselves the reason for remaining underground by the petitioner. It is also submitted that in violation of the conditions subject to which he was granted anticipatory bail, he was not appearing before the police. To escape consequential action for the violation of the conditions imposed by the Sessions Court, this story of kidnapping by the 6th respondent was cooked up, it is submitted.

4. The 4th respondent has also filed a statement in which it is submitted that after obtaining anticipatory bail, the petitioner has disappeared and he has not co-operated with the police and therefore they are taking steps to get the anticipatory bail cancelled. The 4th respondent has also produced Ext.R4(a) letter written by the petitioner in which he has confessed that the complaint filed by him on 12.2.2007 before the Commissioner of Police is false. Because of the threat from the part of various persons, he was compelled to make such a complaint and in Ext.R4

(a) he was apologised to the police officer for making such a false complaint.

5. The petitioner has filed a reply affidavit denying the allegations made against him in the counter affidavit of 5th respondent and the statement of the 4th respondent. He admits that he has written Exts.R4(a) and R6(a) and R6(b), but according to him, they were written under the threat and coercion of the 6th respondent while he was under the custody of the said respondent. So, he prays for granting protection to his life overruling the objections of the respondents.

6. Heard counsel on both sides. Learned counsel on both sides reiterated the respective contentions noticed above.

7. Learned counsel for the petitioner referred to the averments of the petitioner in the reply affidavit and submitted that all the allegations against him are unfounded as well as incorrect. Learned counsel for the respondents, on the other hand, submitted that the petitioner is facing criminal prosecution at the instance of several franchisees. Several arrest warrants are pending against him and therefore he has gone underground voluntarily in violation of the conditions of anticipatory bail granted by the Sessions Court. To escape the consequences of absconding, it is pointed out, the petitioner has come up with a false story and filed this writ petition.

8. We notice that the allegations against the petitioner are very serious. Whether they are correct or not, cannot be decided in this writ petition. If we make some observations on the merits of the allegations and counter allegations, the parties involved are likely to be prejudiced. But going by the facts revealed from the pleadings of the parties and the totality of the circumstances of the case, we feel that this is not a fit case where this court should exercise its discretionary jurisdiction under Article 226 of the Constitution of India and order the police to grant protection to the petitioner.

In the result, the writ petition fails and it is dismissed.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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